

The complaint

Miss O is unhappy that NewDay Ltd sent her account to a debt collection agency and recorded a default against her credit file.

What happened

Miss O had a credit card administered by NewDay which had a credit limit of £3,000. The credit card benefited from a 0% interest rate which was applicable to the balance transferred to the card by Miss O when she took it out, and which was conditional on Miss O maintaining the card below the agreed credit limit.

In November 2019 Miss O took the card over the agreed credit limit. Miss O contacted NewDay and arranged to make a payment to bring the account under the agreed credit limit, and NewDay agreed to reinstate the 0% interest promotional offer. In addition, NewDay agreed to refund fees that had accrued on the card because the credit limit had been exceeded and advised Miss O to wait until these refunds had taken place before making the agreed corrective payment on the account. NewDay also told Miss O that she wouldn't have to make a monthly payment against the account in December because the refunds she would receive would cover the required amount.

In December 2019 Miss O made a complaint to NewDay because the refunds she had been promised on her account had still not taken place and because of this the card was still over the agreed credit limit.

In January and February 2020, with NewDay's complaint investigation still ongoing, Miss O sent a series of emails to NewDay chasing a resolution to the ongoing issues with her account.

On 28 January 2020 NewDay sent a notice of default to Miss O as no payment had been made against the account since 18 November 2019. The notice gave Miss O until 19 February to make the outstanding contractual minimum payments, which at that time totalled approximately £190.

On 22 February 2020, because no payment had been received on the account, NewDay issued a notice of termination to Miss O. However, as mentioned above, Miss O was attempting to contact NewDay at this time and sent emails to NewDay dated 9 January, 21 January, 12 February, and 14 February 2020.

On 5 March 2020, NewDay passed Miss O's account to a debt collection agency and issued a final response letter to the complaint that Miss O had raised in November 2019. In their response, NewDay upheld Miss O's complaint as they agreed that Miss O had been given incorrect information about the details of the 0% interest promotional offer on her card, and also that she had been wrongly informed that she wouldn't need to make a payment against the account in December, when in fact this had been required.

Miss O complained to NewDay. She didn't feel that it was fair that they had passed her account to a debt collection agency and recorded a default against her credit file while her

complaint was ongoing and considering that NewDay had told her that she didn't need to make the account payment for December. Miss O was also unhappy that NewDay had taken this action even though she had attempted to contact them via email on four separate occasions.

NewDay looked at Miss O's complaint, but they noted that Miss O had not made a payment on the account since 18 November 2019, and so they felt that they had acted appropriately and didn't uphold Miss O's complaint.

Miss O remained unhappy, so she referred her complaint to this service. One of investigators looked at this case. They felt that, because Miss O had been actively trying to contact NewDay via email, and because she had been told by NewDay to not make a payment until the refunds she was promised took place, and also that she wouldn't need to make a December payment against the account, that NewDay hadn't treated Miss O fairly in passing her account to a debt collection agency and recording a default on her credit file.

So, our investigator recommended that NewDay remove all adverse information relating to this account from Miss O's credit file and that NewDay should recall the account from the debt collection agency so that Miss O can make payments to her account in line with the original credit agreement. Finally, our investigator said that NewDay should pay £100 to Miss O to compensate her for the distress and inconvenience this matter had caused.

NewDay didn't agree with the recommendations put forward by our investigator and so the matter was escalated for an ombudsman to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In doing so I've reached the same outcome as our investigator, for essentially the same reasons.

I accept that Miss O didn't make any payment against the account in the period from 18 November 2019 to when the account was passed to a debt collection agency on 5 March 2020, but I feel that there are mitigating circumstances as to why this was the case.

For instance, Miss O was told by NewDay to wait until the refunds she was expecting were credited to her account before making the payment to bring the account back within the agreed credit limit. Miss O was also told by NewDay that she wouldn't need to make a monthly minimum payment against the account for December, as NewDay acknowledge in their complaint final response letter.

In their correspondence with our investigator, NewDay explain that the default notice sent to Miss O on 28 January 2020 was a regulatory requirement and had to be sent by them because no payment had been received on the account for two months. However, there is no such regulatory requirement that a default notice must be sent if an account falls two months into arrears.

It is a regulatory requirement that a company must send a customer a default notice if that company chooses to begin default proceedings against that customer, but it is at the discretion of the company to decide when it is appropriate for such proceedings to commence.

The Information Commissioner's Office publishes guidance which recommends that the

action of issuing a default notice be considered by a company when an account has fallen between three and six months into arrears. While this is only guidance, I highlight it here to demonstrate that there was no requirement that NewDay issue a default notice to Miss O when her account was two months in arrears.

It is also the case that one of the two payments which Miss O was in arrears at the time that NewDay issued the notice of default was the December 2019 payment, which NewDay had themselves told Miss O that she didn't need to make.

Furthermore, it's apparent from the emails that Miss O sent that she was actively trying to contact NewDay to arrange a resolution to the ongoing issue. NewDay have explained that these emails were sent by Miss O to their complaints department which attached them to Miss O's complaint and that they were not made available to staff from other departments or recorded against her general account.

But it seems to me that what's important here is that Miss O did attempt to contact NewDay by email, and that NewDay did receive the emails that Miss O sent. It may be the case that NewDay didn't disseminate the contents of those emails effectively between their different internal departments, but this isn't something I can reasonably hold Miss O accountable for.

NewDay have also said that they would have expected Miss O to contact them via other channels once she realised that her emails weren't being responded to, but I'm not convinced of the validity of this argument, especially considering that NewDay don't seem to have attempted to contact Miss O by any other channels when their letters weren't being responded to.

It's also notable that Miss O had an outstanding complaint against NewDay which would ultimately be found in her favour at the time that NewDay began default proceedings against her. Whilst it is at the discretion of a business whether or not suspend collections activity while a complaint is ongoing, there may be instances where not doing so leads to an unfair outcome for the customer, and I think that that's the case here.

I say this because the complaint response was issued by NewDay on the same day that they transferred the account to a debt collection agency, and because the nature of the complaint was such that if a response had been issued sooner by NewDay, this may have contributed to Miss O making the necessary repayments required by NewDay to avoid the account being transferred as such.

And so, considering the key points that I have outlined above, I can't reasonably conclude that NewDay have acted fairly toward Miss O in recording a default against her credit file and in transferring her account to a debt collection agency in the way that they have.

It follows then that I'm in agreement with the view put forward by our investigator, and I will be upholding Miss O's complaint on that basis.

Putting things right

To put things right, NewDay Ltd should recall this account from the debt collection agency and allow Miss O the opportunity, if still required, to make an arrangement to bring the account under the agreed credit limit so that it may continue on the original contractual terms.

NewDay have explained that their internal systems may make it difficult for the original contractual terms to be reinstated. This does not effect the spirit of my decision, and it is left to the discretion of NewDay whether they need to offer repayment terms to Miss O that differ

from the original contractual terms in order to fulfil the obligation of recalling the account from the debt collection agency, so long as any difference in terms is in Miss O's favour.

NewDay Ltd should also remove all adverse information from Miss O's credit file relating to this account and should pay £100 compensation to Miss O for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd on the basis outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 16 March 2021.

Paul Cooper
Ombudsman